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6 Attorneys for Complainant

7
8 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. AC-2003-7

11 FUNG TZYY YEN
12 1628 S. 3rd Street
Alhambra, CA 91803

13 Certified Public Accountant License No. CPA
14 37290

**DEFAULT DECISION
AND ORDER**

[Gov. Code, §11520]

15
16 Respondent.

17 FINDINGS OF FACT

18 1. On or about February 4, 2003, Complainant Carol Sigmann, in her official
19 capacity as the Executive Officer of the California Board of Accountancy, Department of
20 Consumer Affairs, filed Accusation No. AC-2003-7 against Fung Tzyy Yen (Respondent) before
21 the California Board of Accountancy.

22 2. On or about March 18, 1983, the California Board of Accountancy (Board)
23 issued Certified Public Accountant License No. CPA 37290 to Respondent. The Certified Public
24 Accountant License expired on July 31, 2002, and has not been renewed.

25 3. On or about February 18, 2003, Anna Carpenter, an employee of the
26 Department of Justice, served by Certified and First Class Mail a copy of the Accusation No.
27 AC-2003-7, Statement to Respondent, Notice of Defense, Request for Discovery, and
28 Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record

1 with the Board, which was and is 1628 S. 3rd Street, Alhambra, CA 91803. A copy of the
2 Accusation, the related documents, and Declaration of Service are attached as Exhibit A, and
3 are incorporated herein by reference.

4 4. Service of the Accusation was effective as a matter of law under the
5 provisions of Government Code section 11505, subdivision (c).

6 5. On or about February 19, 2003, the postal return receipt was signed. A
7 copy of the postal return documents are attached hereto as Exhibit B, and are incorporated herein
8 by reference.

9 6. Business and Professions Code section 118 states, in pertinent part:

10 "(b) The suspension, expiration, or forfeiture by operation of law of a license
11 issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the
12 board or by order of a court of law, or its surrender without the written consent of the board, shall
13 not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the
14 board of its authority to institute or continue a disciplinary proceeding against the licensee upon
15 any ground provided by law or to enter an order suspending or revoking the license or otherwise
16 taking disciplinary action against the license on any such ground."

17 7. Government Code section 11506 states, in pertinent part:

18 "(c) The respondent shall be entitled to a hearing on the merits if the respondent
19 files a notice of defense, and the notice shall be deemed a specific denial of all parts of the
20 accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
21 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

22 8. Respondent failed to file a Notice of Defense within 15 days after service
23 upon him of the Accusation, and therefore waived his right to a hearing on the merits of
24 Accusation No. AC-2003-7.

25 9. California Government Code section 11520 states, in pertinent part:

26 "(a) If the respondent either fails to file a notice of defense or to appear at the
27 hearing, the agency may take action based upon the respondent's express admissions or
28 upon other evidence and affidavits may be used as evidence without any notice to

1 respondent."

2 10. Pursuant to its authority under Government Code section 11520, the Board
3 finds Respondent is in default. The Board will take action without further hearing and, based on
4 Respondent's express admissions by way of default and the evidence before it, contained in
5 Exhibits A and B finds that the allegations in Accusation No. AC-2003-7 are true.

6 11. The total costs for investigation and enforcement are \$8,021.96 as of
7 March 13, 2003.

8 DETERMINATION OF ISSUES

9 1. Based on the foregoing findings of fact, Respondent Fung Tzyy Yen has
10 subjected his Certified Public Accountant License No. CPA 37290 to discipline.

11 2. A copy of the Accusation and the related documents and Declaration of
12 Service are attached.

13 3. The agency has jurisdiction to adjudicate this case by default.

14 4. The California Board of Accountancy is authorized to revoke Respondent's
15 Certified Public Accountant License based upon the following violations alleged in the
16 Accusation:

17 a. Business and Professions Code section 5100(c), committed fraud.

18 b. Business and Professions Code section 5100(j), prepared
19 fraudulent corporate documents and used them to open fraudulent bank accounts.

20 c. Business and Professions Code section 5100(k), misappropriated
21 funds by false pretenses and fraudulent conduct.

22 ORDER

23 IT IS SO ORDERED that Certified Public Accountant License No. CPA 37290,
24 heretofore issued to Respondent Fung Tzyy Yen, is revoked.

25 Pursuant to Government Code section 11520, subdivision (c), Respondent may
26 serve a written motion requesting that the Decision be vacated and stating the grounds relied on

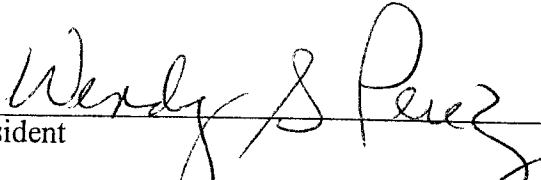
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1 within seven (7) days after service of the Decision on Respondent. The agency in its discretion
2 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the
3 statute.

4 This Decision shall become effective on April 25, 2003.

5 It is so ORDERED March 26, 2003

6
7 
8 President

9 FOR THE CALIFORNIA BOARD OF ACCOUNTANCY
10 DEPARTMENT OF CONSUMER AFFAIRS
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25 Attachments:

26 Exhibit A: Accusation No.AC-2003-7, Related Documents, and Declaration of Service
27 Exhibit B: Postal Return Documents

28 DOJ docket number:03541110-LA2002AD1851

Exhibit A

Accusation No. AC-2003-7,
Related Documents and Declaration of Service

BILL LOCKYER, Attorney General
of the State of California
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Attorneys for Complainant

BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. AC-2003-7

FUNG TZY YEN
1628 S. 3rd Street
Alhambra, CA 91803

ACCUSATION

Certified Public Accountant License No. CPA
37290

Respondent.

Complainant alleges:

PARTIES

1. Carol Sigmann (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.

2. On or about March 18, 1983, the California Board of Accountancy issued Certified Public Accountant License Number CPA 37290 to Fung Tzyy Yen (Respondent). The applicable renewal period for this Certificate is August 1 through July 31 of even numbered years. On or about March 1989, said license was in a renewed status with continuing education. The Certificate expired on July 31, 2002, and has not been renewed.

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JURISDICTION

3. This Accusation is brought before the California Board of Accountancy (Board) , Department of Consumer Affairs under the authority of the below mentioned statutes and regulations.¹

4. Section 5100 of the Code states:

After notice and hearing the board may revoke, suspend or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct which includes, but is not limited to, one or any combination of the following causes:

....

(c) Dishonesty, fraud, or gross negligence in the practice of public accountancy or in the performance of the bookkeeping operations described in Section 5052.

....

(j) Knowing preparation, publication or dissemination of false, fraudulent, or materially misleading financial statements, reports, or information.

(k) Embezzlement, theft, misappropriation of funds or property, or obtaining money, property, or other valuable consideration by fraudulent means or false pretenses.

5. Government Code section 11519(d) states in pertinent part that terms of probation may include an order of restitution. Where restitution is ordered and paid pursuant to the provisions of this subdivision, the amount paid shall be credited to any subsequent judgment in a civil action.

6. Section 5107 of the Code states, in pertinent part, that the Board's Executive Officer may request the administrative law judge, as part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate, found guilty of

1. All statutory references are to the Business and Professions Code (Code) unless otherwise indicated.

unprofessional conduct in violation of subdivisions (b), (c), (i) or (j) of section 5100, to pay to the Board all reasonable costs of investigation and prosecution of the case, including, but not limited, to attorney's fees.

7. Section 118, subdivision (b), of the Code provides that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

CAUSE FOR DISCIPLINE

(Acts of Dishonesty, Fraud or Gross Negligence)

8. Respondent is subject to disciplinary action under section 5100 of the Code for committing acts in violation of Sections 5100(c) (acts of dishonesty, fraud and gross negligence), 5100(j) (knowing preparation, publication, dissemination of false, fraudulent, or materially misleading financial information) and 5100(k) (embezzlement, theft, misappropriation of funds or property, or obtaining money, property or other valuable consideration by fraudulent means or false pretenses) based upon the following conduct:

a. From on or about 1997 to on or about December, 1999, Respondent was retained by Bahman K. (hereinafter "BK"), as his personal and business accountant. BK, Vice President of Marble Tek, Inc. and Nyko, Inc., had two legitimate bank accounts at Downey Savings and investment accounts at Everen Securities/First Union Securities. Respondent had limited power of attorney, to buy, sell, give orders and enter into contracts for the purchase and/or sale of commodities on the investment accounts.

b. On or before August 20, 1999, Respondent prepared fraudulent corporate documents, including: 1) a Certificate of Corporation Resolution, listing himself as President, Vice President, Secretary and Treasurer of Marble Tek, Inc.; 2) Articles of Incorporation of Nyko, Inc., naming himself as President, Vice President, Secretary and Treasurer of Nyko, Inc. Respondent then opened two fraudulent bank accounts at Wells Fargo Bank under the names of Marble Tek, Inc. and Nyko, Inc., using the fraudulent corporate documents for identification. In and about August 1999 to early October 1999, Respondent, without authorization, instructed BK's stock brokerage firm to withdraw funds held at the Downey Savings Bank, and issue

1 checks in the name of BK's companies, Marble Tek, Inc. and Nyko, Inc. From on or about
2 August 1999 to on or about December 1999, Respondent transferred a total of \$758,000 from
3 BK's legitimate accounts into the fraudulent bank accounts at Wells Fargo Bank and
4 subsequently withdrew the money for his own personal use.

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6 PRAYER

7 WHEREFORE, Complainant requests that a hearing be held on the matters herein
8 alleged, and that following the hearing, the California Board of Accountancy issue a decision:

- 9 1. Revoking, suspending or otherwise imposing discipline on Certified
10 Public Accountant License Number CPA 37290, issued to Fung Tzyy Yen;
11 2. Ordering Fung Tzyy Yen to pay the California Board of Accountancy the
12 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
13 Professions Code section 5107;
14 3. Compelling respondent to make restitution in the amount of \$758,000,
15 and;
16 4. Taking such other and further action as deemed necessary and proper.

17 DATED: February 4, 2003

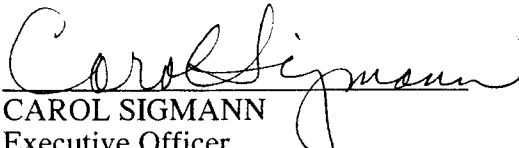
18
19 
20 CAROL SIGMANN
21 Executive Officer
22 California Board of Accountancy
23 Department of Consumer Affairs
24 State of California
25 Complainant
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Exhibit B
Postal Return Receipts

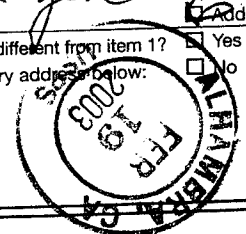
SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. **Fung Tzyy Yen**
1628 S. 3rd Street
Alhambra, CA 91803
#7001 0360 0003 2715 0669

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) YU YEN		B. Date of Delivery
C. Signature X <i>yu yen</i>	<input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee	
D. Is delivery address different from item 1? If YES, enter delivery address below:		
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.		
4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes		



7001 0360 0003 2715 0669

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952

**U.S. Postal Service
 CERTIFIED MAIL RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)**

OFFICIAL USE

Postage	\$
Certified Fee	

Return Re (Endorsement)
 Restricted De (Endorsement)
 Total Postage

Fung Tzyy Yen
1628 S. 3rd Street
Alhambra, CA 91803
#7001 0360 0003 2715 0669

Sent To

Street, Apt. No.; or PO Box No. **2/18/03 ACCUSATION**
 City, State, ZIP+ 4 **SVC PKET**

PS Form 3800, January 2001

See Reverse for Instructions